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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
10016692-1 (HDP: 6215-000030/US)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]		Application Number 10/086,494	Filed March 1, 2002
On _____		First Named Inventor Donald C. SOLTIS, Jr.	
Signature _____		Art Unit 2188	Examiner Pierre M. VITAL
Typed or printed name			

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages of attachments are provided.

I am the

applicant/inventor

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

attorney or agent of record.
Registration number. _____

attorney or agent acting under 37 CFR 1.34.
Registration number: 37,275

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

Signature

Thomas S. Auchterlonie/Reg. No. 37,275

Typed or printed name

703-688-8000

Telephone number

October 18, 2005

Date

*Total of _____ forms are submitted.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Donald C. SOLTIS, Jr.

Application No.: 10/086,494

Filed: March 1, 2002

Group: 2188

Examiner: Pierre M. VITAL

For: APPARATUS AND METHOD FOR INTERFACING WITH
CACHE MEMORY

Att'y Docket No.: 10016692-1
(HDP 6215-000030/US)

Customer Service Window
Randolph Building
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Alexandria, VA 22314
Mail Stop AF

October 18, 2005

REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Sir:

Further to the concurrent filing of a Notice of Appeal, the following remarks are submitted in connection with the above-identified patent application under the Pilot Program for Pre-Appeal Brief Conference (Off. Gaz. Patent & Trademark Office, Vol. 1296, No. 2, July 12, 2005).

Claims 31-50 are pending in the current application. Of those, claims 31, 41 and 50 are independent.

FIRST REJECTION FOR WHICH CONF. REQUESTED

A Pre-Appeal-Brief Conference is requested to review the rejection¹ of claims 31-38 and 40-50 as being anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,905,141 to Brenza (the ‘141 patent).²

Argument

The gist of the Examiner’s position appears to be that there is no difference between the phrase “available within” and the claimed phrase “available to.” That is, the Examiner asserts that (taking claim 1 as an example) the claimed (underlined emphasis added) “identifying which of the plurality of cache units are available to the corresponding processor” is the same as identifying within which of the plurality of cache units the requested information is available. Applicant submits that this is an unreasonably broad interpretation of the phrase “available to.”

Applicants recognize that an Examiner is charged with giving the broadest reasonable interpretation to the claims.³ “The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.”⁴ The Examiner has run afoul of the latter.

Some background information is helpful to understand how the Examiner is interpreting the claim language inconsistently with what the ordinarily-skilled artisan would have done. That background information is as follows.

The ‘141 patent discloses a cache pre-fetching technique that identifies which of a plurality of partitions in a cache contains the information that is the subject of a memory access request; see col. 7, lines 12-23. If one of the partitions cannot be identified, this does not indicate a cache-miss; rather merely a non-hit.⁵ If a non-hit is experienced, the ‘141 patent teaches that

¹ See pages 4-7, Final Office Action mailed July 18, 2005, as well as pages 2-3 thereof for the Examiner’s statements in rebuttal to the response filed April May 9, 2005.

² Applicants previously traversed this rejection in the response filed May 9, 2005, e.g., see pages 8-9.

³ See MPEP § 2111, page 2100-46.

⁴ See MPEP § 2111, page 2100-47 (underlined emphasis added).

⁵ The terminology “non-hit” is introduced here by Applicants as representing a helpful label for drawing a contrast with a cache-miss.

all partitions in the cache are then queried for the requested information. A cache miss would result in a query being made to the next higher (i.e., more slowly accessible) level of memory. In general, a cache miss is understood as an indication that the requested information is not available within the cache. A pre-fetch hit and/or a cache hit, by contrast, indicates that the requested information is available within the cache.

Proper claim interpretation does not revise or ignore the explicit language of the claims.⁶ Here, however, the Examiner has revised the explicit claim language to facilitate reading the claims on the '141 patent. Here, the Examiner has impermissibly treated (taking claim 1 as an example) the claimed "identifying which of the plurality of cache units are available to the corresponding processor" (underlined emphasis added) as being the same as identifying within which of the plurality of cache units the requested information is available.

Not only is such revisionary claim interpretation improper by itself, but it is inconsistent with how the ordinarily-skilled artisan would have interpreted the claims. In the art of cacheing and cache architectures, the ordinarily-skilled would have appreciated the significant difference between the phrases "available to" and "available within" as they are respectively applied to a cache, e.g., such differences being apparent from the discussion presented above.

Claims 32-38 and 40 depend at least indirectly from claim 31 and, as such, exhibit at least the same distinction, respectively.

Claims 32-40 depend at least indirectly from claim 31 and, as such, exhibit at least the same distinction, respectively.

Each of independent claims 41 and 50 recites features that are similar to those of claim 1, and thus each of claims 41 and 50 similarly distinguishes over the '141 patent, respectively. Claims 42-49 depend at least indirectly from claim 41 and, as such, exhibit at least the same distinction, respectively.

In view of the foregoing discussion, the §102(b) rejection of claims 31-38 and 40-50 based upon the '141 patent is improper. Withdrawal of the rejection is requested.

⁶ Generation II Orthotics Inc. v. Medical Technology Inc., 59 USPQ2d1919, 1927 (Fed. Cir. 2001) (underlined emphasis added).

SECOND REJECTION FOR WHICH CONF. REQUESTED

The Pre-Appeal Brief Conference also is requested to review the rejection⁷ of claim 39 under 35 U.S.C. §103(a) as being unpatentable over the ‘141 patent in view of Olukotun (Kunle Olukotun et al., “The Case for a Single-chip Multiprocessor,” Proceedings of the Seventh International Conference on Architectural Support for Programming Languages and Operating Systems, Cambridge, MA, Oct. 1996).⁸

Claim 39 depends from claim 1 and, as such, exhibits at least the distinction of claim (noted above) over the ‘141 patent. The Olukotun reference fails to make up for the shortcomings of the ‘141 patent. Thus, the §103(a) rejection of claim 39 as being obvious over the ‘141 patent in view of the Olukotun reference is improper. Withdrawal of the rejection is requested.

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⁷ See Pages 7-8, Final Office Action mailed July 18, 2005.

⁸ Applicants previously traversed this rejection in the response filed May 9, 2005, e.g., see page 9.

CONCLUSION

In view of the above remarks, Appellant respectfully requests that the Pre-Appeal Brief Conference find in favor of Applicants' positions and arrange for withdrawal of the above-noted rejections, culminating in the sending of a Notice of Allowance of the pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Pre-Appeal-Brief Conference is requested to contact the undersigned at the indicated telephone number.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By:



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